

NATURAL RESOURCES COMMISSION
Minutes of July 22, 2003

MEMBERS PRESENT

Michael Kiley, Chair
Rick Cockrum
John Goss, Secretary
Damian Schmelz
Jerry Miller
Robert Murphy
Maryann Habeeb
Jane Anne Stautz
Raymond McCormick, II

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Krystal Wethington	Executive Office
Paul Ehret	Executive Office
John Davis	Executive Office
Bob Waltz	Entomology and Plant Pathology
Linnea Petercheff	Fish and Wildlife
Sam Purvis	Law Enforcement
Jeff Wells	Law Enforcement
John Bacone	Nature Preserves
Cliff Chapman	Nature Preserves
Nila Armstrong	Outdoor Recreation
Bruce Stevens	Reclamation
Brock Mayes	Reclamation
Steve Weinzapfel	Reclamation
Jerry Pagac	State Parks and Reservoirs
Marian England	State Parks and Reservoirs
Tony Hazelwood	State Parks and Reservoirs
George Bowman	Water
Jeff Myers	Natural Resources Foundation
Jill Hoffman	Soil Conservation

GUESTS

Joe Seiner	Tina Connor
Roy Garrett	Chris Andrews
Beth Compton	

REGULAR REPORTS

Michael J. Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 1:06 p.m., EST, on July 22, 2003, at West Baden Springs Hotel, West Baden, Indiana. With the presence of nine members, the chair observed a quorum.

Damian Schmelz moved to approve the minutes of May 20, 2003. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

John Goss provided the Director's Report. He distributed eight "good news" clippings from the INDIANAPOLIS STAR and other area papers "mostly supporting DNR. In my lifetime I didn't expect the STAR to say 'our opinion for the parks the future is now.'" He noted the article characterized the \$20 million approved by the State Budget Agency for DNR properties as "just a drop in the bucket" for what needs to be invested. "I think that is a tribute to all our staff, our efforts, the credibility the Commission has built over the years, and the support of the Legislators. It has all been very positive."

Goss said the DNR budgets have been approved totaling approximately \$121 million. Immediately after July 1, the State Budget Agency asked the agency to set aside 5% of the budget, with approximately \$2 million reserved to help with the State deficit. "We did not have to make significant visible cutbacks to reach that this time partly because we had about 20 people take early retirement." He noted that half the vacant positions due to retirement would be filled, with another eight positions to remain vacant "to save personnel costs, mostly in central office."

Goss said the Public Employee Retirement Fund cutback is an item that may be discussed in the future. Previously, the State paid into the Fund for all full-time seasonal staff. "We have several hundred people that come back every year and were accumulating retirement credits." Goss said there was a change in the statute that discontinued the retirement credit for summer staff. "We think that probably long-term that is not a positive, but a negative. We have the most full-time seasonal people of anybody in the State." He said discussion would continue with the Administration regarding the impact to DNR.

Goss provided a handout listing the issues and the Legislative Chairs for the 2003 Interim Study Committees. He said the Committees have met and will convene three more meetings in August through October. "We anticipate all these issues to be considered." He noted particularly the issue of fishing licenses for seniors and youth. Research indicates that surrounding states do not provide free fishing licenses for persons over 65. Goss said some states charge a \$10 fee for senior licenses, and some charge a reduced youth license fee of \$5 to \$7 for those over the age 13. He noted that the Natural Resources Interim Study Committee is scheduled to consider the issue this summer. "It looks like, at a minimum, it would bring in \$800,000 per year or quite a bit more depending on the fee." Goss said, in addition, for each license sold, the federal match would be \$6.60. "If we pick up 25,000 new licenses, times \$6.60, it's a lot of money pretty quick. This may be one of the more controversial things we've discussed in quite awhile, but we are off to a pretty good start." He said the Sportsmen's Roundtable has supported the fee in the past and continues to endorse it. Goss said the fee proposal was also taken to the 19-member conservation group advisory last Saturday. The advisory group had "blanket consensus" to move the proposal to full discussion. "It's one of the bigger discussion items."

Goss said there was a news report this week that was somewhat misleading. The report suggested State Parks was considering naming properties for sponsors. "That's really a bit misleading about what has been discussed. The Heritage Trust Foundation has adopted a policy that we would

accept donations for major improvements at DNR properties and appropriately give donors credit with signage and possibly name some facilities, but we certainly are not going to change the historical name of any Department property by putting a corporate name on it.” He added, “What we’re really trying to say is that we’re looking for long-term partnerships and commitments from community organizations and private sector folks who would like to be partners with State Park properties and other DNR properties.”

Jerry Miller, Chair of the Advisory Council for Lands and Cultural Resources, provided his report. He said the two advisory councils met jointly at Prophetstown State Park. “I’m amazed at the progress that’s being made and what a wonderful park it’s going to be for us and for our citizens.” He said the items carried from the Advisory Councils to the Commission were not controversial.

John Davis, Deputy Director, said “We did have a very nice meeting at Prophetstown, and we’re very proud of the work that’s being done there.” He noted the new park was located near Battle Ground.

Davis said Indiana and neighboring states were continuing to work on attempting to control chronic wasting disease that can be devastating to deer populations of white-tailed deer. “One of the things...I wanted you to know is that we’ve organized a white-tailed deer advisory group that is going to meet this summer. We’ll be talking about captive white-tailed deer, and all the things that go with that, with the hopes of reaching some conclusions and consensus that we can bring back to this body and the Legislature.” He then yielded the floor to Gerald Pagac, Director of the Division of State Parks and Reservoirs.

Gerry Pagac outlined flooding and resulting damages to DNR properties. “We’ve had tremendous rainfall that created records in our upper lakes, especially Roush Lake. All time highs were hit—pretty devastating. We actually have one of our shelters floating that we had to tie down and tow back to a tree. The water is 50 feet higher than normal pool would be in this time of the year. There is just incredible flooding with 90% of the property under water. All of the prairie plantings that we’ve done have been compromised to the point where we may end up with just switch grass. It’s really very difficult, and now that the water recedes, it’s the worst smell you can imagine. It’s pretty depressing.”

Pagac said the “positive thing” is the lakes are there “to do a job, which they did, to hold back that water.” He said the agency was particularly troubled by the high water at Mississinewa Lake. A very expensive reconstruction of the dam there is currently in progress, so for the last four years the water was drawn down there “more than they normally would. They had to protect that dam as best they could, but it still was rising, and they had to go to a Level 2 which involves 24-hour surveillance. A lot of things come into play in case the water would rise too rapidly, and we would then have a very bad situation.” Fortunately, conditions have improved.

Pagac said Salamonie Lake is similarly close to a record high. “Most of the campgrounds are under water.” Only 66 of more than 260 sites “are on dry land at this point. So, we’re really struggling with that. We’ll get through it, but it’s adversely affecting our revenue greatly.”

Pagac said the new central reservation system “has been going just great. We’ve had so many positive comments, and I think it’s really helping us. Revenue wise it’s way up. With the new procedure, people can reserve six months out, and they pay for the entire stay up front. Before they didn’t do that. The use of the Internet is currently outstripping any other state’s usage for reservations.”

Jeff Myers updated the Commission on DNR's participation in the Indiana State Fair. He said a team of the agency's divisions was organized to develop more programming for the Natural Resources Building. "We're going to make it much less of a static display with much more emphasis on interpretative programs that we do with our properties. Programs that our partnership organizations are helping us with." He said the Indiana State Fair was cooperating in making the Natural Resources Building more of a destination and "more pedestrian friendly. We're looking to more renovations on the grounds. This year the animal cages at the rear of the building have been removed to create more programming space, and there will be more landscaping work in oncoming years."

Pagac spoke of Mother Nature's Mercantile, a new effort to incorporate an opportunity to shop within citizen visitation at the Natural Resources Building. The shop will sell toys, gifts, clothing, and books. He said to promote the new initiative, there will be newspaper ads and additional information is available on the DNR's website at <http://www.in.gov/dnr/statefair/mother.html>

John Davis said the DNR started a program to reintroduce ospreys. Eight young ospreys of slightly varying ages are being released at both of two agency properties. One of the release sites is located at Patoka Lake near where the Commission is meeting.

John Goss said there was one final item he wished to cover. The Indiana Department of Transportation has prepared a new state map that includes on the cover a depiction of a keel boat that is coming down the Ohio River to commemorate the Lewis and Clark Expedition. To memorialize that event, a group is going to land at the Falls of the Ohio State Park on October 14, 2003.

Raymond McCormick, Chair of the Advisory Council for Water and Resource Regulation, said "we're still enjoying the success of the joint Council meetings." He said he would reserve substantive comments for particular agenda items. "I would like to say, however, that it was a great privilege for me to travel from Vincennes, where William Henry Harrison started his march, to the site of that important event and the new State Park. I was very encouraged and impressed by the development. There has been a tremendous amount of native prairie grass plantings, and the biodiversity there was great." He said other site features, including those relating to the area's history, as well as necessities for infrastructure and transportation, were coming into place. "The old farm is being developed, and they have checked corn. That's a part of our past that was real significant at one time. Everyone up there is to be commended because they're doing a great job."

PERMANENT APPOINTMENTS

Permanent Appointment for the Position of Assistant Property Manager at Patoka Lake

Rick Cockrum, Commission Member, presented this item. He said both of the permanent positions are filled with "well-qualified individuals and their enthusiasm, education, and experience is remarkable again that these people come to work to serve the State."

Rick Cockrum moved to approve Robert Gutschell for the Assistant Property Manager at Patoka Lake. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Permanent Appointment for the Position of Assistant Property Manager at Kankakee Fish and Wildlife Area

Rick Cockrum also presented this item. He said the Personnel Committee recommended Scott McCormick for the position of Assistant Property Manager at Kankakee Fish and Wildlife Area. Cockrum observed that McCormick has “experience and a strong background. He seems like a very capable and able candidate.”

Rick Cockrum moved to approve Scott McCormick for the Assistant Property Manager at Kankakee Fish and Wildlife Area. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of Dedication of Anderson Falls Nature Preserve, Bartholomew County

John Bacone, Director of the Division of Nature Preserves, presented this item. He described Anderson Falls as a “very significant geological feature and is within a high quality natural area—a mesic forest.” Bacone provided Commission members with aerial graphics of the area. Bacone said the Bartholomew County Park and Recreation owns and manages Anderson Falls as a nature park. He said the area has a trail running through it, a parking lot, and a shelter house. Bacone recommended the entire tract owned by the Bartholomew County for dedication as a nature preserve.

Damian Schmelz moved to approve the dedication of Anderson Falls Nature Preserve in Bartholomew County. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Dedication of Section Six of Flatwoods Nature Preserve, Posey County

John Bacone also presented this item. He said Section Six Flatwoods was located in “pretty much the most southwest extreme tip of Indiana in Posey County almost next to the Wabash River.” Bacone described the area as “very interesting” in that the area contains flatwoods, which is a woods that grows on a hard pan and extremely flat. “In the springtime, the water table is perched, and in the summer it is pretty much a parched water table.” He said the trees stay small and widely spaced, and “a lot of interesting plants” grow in the under story. Bacone provided the Commission with color photographs depicting several rare species found in the area.

Bacone noted that normally nature preserves are not open for recreational hunting; however, most nature preserves are now being overrun with deer. He said the Section Six Flatwoods master plan would allow for, if needed, deer hunts that would be managed by Hovey Lake Fish and Wildlife Area. “That is the only thing that is atypical for a regular master plan of a nature preserve.”

Cockrum asked whether the Commission would grant permission for a deer hunt through a motion or would the item return before the Commission. Bacone said he would not need to come before the Commission, because the deer hunt allowance was within the master plan. “In general, you are not allowed to hunt in nature preserves unless posted otherwise. What we would do if and when a hunt is needed we would just post it.” Kiley asked how the hunters would be defined. Bacone explained that the hunters would check in at Hovey Lake. He said the Division of Nature

Preserves is working with the deer biologists. “We were thinking just a muzzle loader season might have the least impact on nature preserve users.”

Damian Schmelz moved to approve the dedication of Section Six Flatwoods Preserve in Posey County. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Consideration of a Request for Preliminary Adoption of Revised Game Breeder License (312 IAC 9-10-4); Administrative Cause No. 03-093D (LSA #03-149)

Linnea Petercheff, Division of Fish and Wildlife, presented this item. She said the Department enacted an emergency order to provide additional restrictions to white-tailed deer held under a game breeder’s license. Petercheff said that wildlife biologists and conservation officers also felt additional restrictions and clarifications be made to the rule to provide clarifications on animal handling and transportation, and to provide better law enforcement. Petercheff stated that a 14-member advisory group was formed that includes conservation officers, veterinarians, breeders, and wildlife biologists to determine what additional restrictions would be necessary to protect both the animals kept under the license and the native population.

Petercheff explained that the proposed changes included listing of species of animals that can be possessed under the license, which is “basically a clarification of what is currently allowed.” Another change is to require an inspection before a license is issued or amended, and requiring documentation that establishes lawful acquisition or ownership when transporting animals to a different location. She said an “important change” is to require a certification of veterinarian inspection or a health certificate for an animal that is brought into the state. Petercheff said a few amendments are made to the housing and transportation requirements to secure sanitary and humane conditions. “We are also prohibiting the release of wild animals, except for bobwhite and ringtail pheasants.”

Petercheff said a proposed amendment would require reporting the escape of a white-tailed deer to a conservation officer within 24-hours. Amendments are also proposed to mandate compliance with other state, local, and federal law, which would include compliance with the State Department of Animal Health rules and the USDA regulations. She said clarification was made to the record keeping and receipt requirements, and language was added to for suspending, denying, and revoking a license.

Kiley asked whether the Department anticipated a significant amount of input in the public hearing process. Petercheff said some input is anticipated, but with the advisory group discussion and having a public hearing earlier in the year on another revision that was withdrawn, “we do anticipate a lot of controversy on this particular issue. Plus the white-tailed deer concerns are handled in another advisory group.” Kiley asked whether a permit was required to raise pheasant and quail. Petercheff said the breeding of pheasant and quail would be under the current rule proposal. Kiley asked whether a license was required in the past. Petercheff explained that the statute mentions game birds. “So those two are considered native and are listed.” Kiley then inquired of the number of breeders in Indiana. Petercheff answered, “We have quite a few who actually breed, sell, or release the bobwhite or ring neck pheasant.”

Kiley noted that the bobwhite quail population was “decimated” in Indiana since the 1977-1978 blizzard. Cockrum inquired whether the release of chuckers would require a license. Petercheff

explained that chuckers would not need a license. “They are covered under the game preserve license, but are not considered a native species.”

Rick Cockrum moved for preliminary adoption of amendments to 312 IAC 9-10-4 and set forth in the NRC’s packet. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF LAND ACQUISITION

Consideration of a Request by the Division of Land Acquisition to Transfer Land from the Department of Natural Resources to the Indiana Department of Transportation for Highway Improvements on US 224, Wells County

John Davis presented this item. He indicated the property is located at the intersection of Meridian Road near Uniondale and contains .854 acres. He said DNR obtained “color of title” from the Erie Lackawanna Railroad by a quit claim deed. “We are doing this to help INDOT have good title to this road intersection, and INDOT is also buying land from the adjoining fee owners.”

Jane Anne Stautz moved to approve the transfer of land from the DNR to INDOT as requested by the DNR’s Division of Land Acquisition. A resolution accompanied the motion:

WHEREAS, the Indiana Department of Transportation has determined that land conveyed to the Indiana Department of Natural Resources in Wells County is needed for a roadway improvement at U.S. 244 intersection of Meridian Road near Uniondale, Indiana; and

WHEREAS, the Indiana Department of Natural Resources wishes to join with the Indiana Department of Transportation in helping to provide to the citizens of Indiana a safe and modern highway system; and

NOW, THEREFORE, BE IT RESOLVED by the Indiana Natural Resources Commission the conveyance of the subject interest in land shall be accomplished through the cooperation of the Indiana Department of Transportation and the Indiana Department of Natural Resources.

Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS, DIVISION OF STATE FORESTS, AND THE INDIANA STATE MUSEUM AND HISTORIC SITES

Consideration of Proposal for Group Program Fees at State Parks, Reservoirs, Wyandotte Woods SRA/Harrison Crawford State Forest, and the Indiana State Museum and Historic Sites

Jeff Myers presented this item. He said the proposal would authorize fees for individuals participating in group programs at State Parks, Reservoirs, Wyandotte Woods State Recreation Area in Harrison Crawford State Forest, the Indiana State Museum, and at State Historic Sites. The proposal would establish a \$1 fee per person for programs offered to groups from schools,

scouts, churches, and other organized institutions. Exceptions to the fee requirement would apply in numerous circumstances as described in the Commission packet.

According to Myers, “This fee will allow the Department to restore programming for school groups to the level that we were able to do in the past. We solicited extensive feedback from our user groups and from our Advisory Councils and received excellent suggestions there as to how this fee would be established and implemented.” He emphasized that “no school child will be left out of a program for financial need. We have arranged for the teacher to affirm the students who are eligible for the free school lunch program, and, in those cases, the fee would be waived.” Teachers indicated that PTOs and similar school support organizations “are already stepping in to make up those fees when schools go to other institutions such as a zoo or museum. In fact, the feedback has been fairly positive that should the moneys be invested back in these programs that the teachers saw this as a very good thing.”

Jane Anne Stautz observed there had been good press coverage on the reasons for the fees and the needs for their establishment.

Jerry Miller moved to approve fees, with the described exceptions, for individuals participating in group programs at State Parks, Reservoirs, Wyandotte Woods State Recreation Area in Harrison Crawford State Forest, the Indiana State Museum, and at State Historic Sites. Maryann Habeeb seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF OUTDOOR RECREATION

Consideration for Approval of the Establishment of Registration Fees for Off-Road Vehicles and Snowmobiles Under IC 14-16 (HEA 1552)

Nila Armstrong, Division of Outdoor Recreation, presented this item. She said this year’s session of the Indiana General Assembly enacted new legislation pertaining to the regulation of and fees for snowmobiles and off-road vehicles. She indicated the legislation:

1. Requires the DNR to issue registration decals for ORVs.
2. Requires an ORV purchased after December 31, 2003 to be registered and creates exemptions to the registration requirements.
3. Allows certain person to carry a loaded handgun while operating an ORV or snowmobile.
4. Consolidates statues governing the registration of ORVs and snowmobiles.

Armstrong said some aspects of fee scheduling were placed within NRC jurisdiction. Based on this new authority, the Division of Outdoor Recreation recommended Commission approval of a series of new fees. She indicated the fees were needed, as a part of the agency program, to help “cover the cost of doing business”:

Replacement Decal (2)	IC 14-16-1-11.5	\$6
Corrected Registration	IC 14-16-1-14(d)	\$15
Transfer Registration	IC 14-16-1-14(e)	\$30
Duplicate Registration	IC 14-16-1-15	\$15
Dealer Registration		

First Two	\$30
Additional Registrations	\$10

Rick Cockrum asked whether there has been a fiscal analysis as to how much additional revenue is anticipated from the new fee structure. Armstrong said there had not been an analysis because currently not all off-road vehicles and snowmobiles are registered. The number of these vehicles is unknown. The new legislation would require registration even if used on private property, although there are some exceptions to the requirement.

Lt. Col. Jeff Wells said the legislation requires the registration of all off-road vehicles purchased after December 31, 2003. “We really don’t have a good feel for how many of those are out there currently that aren’t registered. This will significantly impact the number of registered vehicles.”

Roy Garrett spoke as a representative of the “ORV community. We understand the reasons for the fees, and we support them.” The Chair thanked Garrett for his assistance and cooperation with the DNR and for his attendance at the Commission meeting.

Rick Cockrum moved to approve the fee schedule effective August 1, 2003. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY

Consideration for Preliminary Adoption of Amendments to 312 IAC 18 to (1) Govern Releases of Beneficial Organisms and Pests or Pathogens; (2) Declare Kudzu a Pest or Pathogen and Provide for its Regulation; (3) Authorize the Use of Technical Committees by the State Entomologist; and (4) Re-Establish Fees for the Certifications of Florist and Greenhouse Stock; Administrative Cause No. 03-109E

Robert Waltz, State Entomologist, presented this item. He said for consideration as to preliminary adoption were several important amendments to the rules governing the regulatory activities of the Division of Entomology and Plant Pathology.

First, new licensure requirements would apply where a person wishes to release a “pest or pathogen” or a “beneficial organism”. He said, “The primary reason for this rule proposal is that the Federal Government has determined it will no longer regulate interstate movements of pests or pathogens or of beneficial organisms.” Once the Federal Government determines a pest or pathogen or a beneficial organism can be brought into the United States, the individual States are now responsible for their movements across State borders. The proposed licensure requirements would authorize rigorous reviews before the release of new species in Indiana, including analyses by applicants that would be the equivalent of Environmental Assessments and Environmental Impact Statements. There also would be restrictions on the movement of species within Indiana, where those species are not already widely distributed in the State.

Second, the rules would declare kudzu (*Pueraria lobata*) to be a “pest or pathogen” and require its regulation under proposed 312 IAC 18-3-16. Kudzu is “an invasive noxious weed. It is very aggressive and has been found in 26 different sites in Indiana, including one as far north as LaPorte County.” He said a very active eradication program is now underway in southern Illinois. “Indiana is beginning to see more spread of this plant, presumably due to the relatively milder winters in recent years.” The rule section would provide for methods of control and would prohibit the sale of kudzu in Indiana.

Damian Schmelz said kudzu was introduced in Indiana “probably 45 to 50 years ago for erosion control. It was one of those ‘modern miracles’. We’re now going to do everything we reasonably can to get rid of this stuff? It’s still there.”

Waltz answered, “Yes, as a matter of fact there is a parallel rule adoption that is being pursued by the Indiana State Chemist. His office is seeking to declare kudzu a noxious weed as well. The two agencies will be working together.”

Schmelz asked, “Who do we contact to identify the best means of eradication? We know the standard stuff, Roundup, will do it, but.”

Waltz answered, “Actually, a person on the staff” of the Division of Entomology and Plant Pathology “is working on this now and will soon be getting it up on our website. We’ll work on getting the word out to people now.”

Waltz then continued with his review of the rule proposal. He said the third aspect would provide a “public acknowledgement of our use of technical committees. For much of the work we do now, we require the use of teams experts in specialized areas. It’s something that I think we need to do and that will add clarity as we work to develop coherent policies and rules.”

Fourth, the amendments would re-establish fees for the voluntary certification of florist and greenhouse stock. During the Bayh Administration, the fee was rescinded. “We did the same work we had been doing for no cost, and we’re now recommending the re-implementation of this fee to be consistent with other nursery fees.”

Jane Anne Stautz moved to give preliminary adoption to the amendments to 312 IAC 18 as proposed by the Division of Entomology and Plant Pathology. Robert Murphy seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF RECLAMATION

Consideration for Preliminary Adoption of Proposed Rule Amendments to 312 IAC 25 Governing Standards for Blasting and Blaster Certification; Administrative Cause No. 03-014R (LSA #03-169)

Bruce Stevens, Director of the Division of Reclamation, presented this item. He said that recommended for preliminary adoption were amendments to the rules governing the certification of blasting at Indiana surface coal mines. He said, the proposal “pertains to new requirements for continuing education for certified blasters in the State of Indiana, as well as minor adjustments to rules that are already existing.” A “certified blaster” is a person with at least twelve months of experience in blasting operations under the immediate supervision of an experience blaster, who has completed an approved training course in blasting technology, who has successfully passed the blaster certification examination administered by the Division of Reclamation, and who holds a valid certificate. Blasting activities at Indiana coal mines must be conducted under the supervision of a certified blaster. He said the blaster certification program has been in effect for more than 15 years in Indiana, but there is currently no continuing education requirement.

Stevens said a continuing education program for certified blasters is needed to help assure “an awareness of changing technologies is present.” The proposal would require that 15 hours of

training be obtained by any certified blaster in a three-year period. “This rule package also contains a requirement that if any individual fails the certification test three times, that individual must re-take the approved training course prior to taking the certification test again.”

Stevens said the Division of Reclamation discussed the proposal with the Regulatory Affairs Committee of the Indiana Coal Council. The Committee expressed conceptual support for the rule amendments “so long as there is ample opportunity for an individual to receive the training necessary to meet the requirements.” He said the Division of Reclamation intends to make certain that training opportunities are numerous.

Rick Cockrum said he assumed there were “special privileges that would come to a person, after being certified as a blaster, including access to equipment, supplies, and materials relative to blasting. Has the staff talked about security and safety and access to that kind of certification?”

Stevens responded that there are “a couple of different authorities over this kind of issue.” One is the Division of Reclamation which observes blasting activities on the mine site. In addition, the “Federal Alcohol, Tobacco, and Firearms agency has a licensing process in which anyone who has access to explosives must undergo a background check and so forth.”

Chairman Kiley recalled that the Natural Resources Commission historically dealt with citizen complaints alleging damages caused by blasting, but it has not received these kinds of complaints “in some time. It seems like the blasting certification program has got to have helped with that situation.”

Stevens responded, “We have a very professional staff that is very well educated. The Division of Reclamation of the State of Indiana owns more seismographs than any similar regulatory authority in the nation. We have three individuals who are so dedicated to the blasting program that they are sought out by national advisory groups. At the same time, however, the issue is still there. We still have blasting complaints, but the difference now is that the people are doing the blasting is not ‘just any ordinary Joe’. They must complete a course, and pass that test, and be certified.” He said included was knowledge of seismograph operation.

Jane Stautz asked, “How many certified blasters do we have today?” Stevens answered, “About 250. Now, that pertains to coal mining. There is no regulatory authority for quarries or things of that nature pertaining to blasting.”

Damian Schmelz moved to give preliminary adoption to the amendments to the certified blaster program to require continuing education and to make other changes. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration for Preliminary Adoption of Proposed Miscellaneous Amendments to 312 IAC 25 that Governs Surface Coal Mining and Reclamation Activities; Administrative Cause No. 03-066R (LSA #03-93)

Bruce Stevens also presented this item. He said for consideration were Indiana SMCRA program amendments required by the U.S. Department of Interior, Office of Surface Mining Control and Reclamation. OSM is the Federal oversight agency for Indiana and other states with programs where those states enjoy primary enforcement authority (or “primacy”). Where OSM makes changes to Federal SMCRA, that agency notifies the primacy states, and those states must modify its programs to be consistent with OSM. “Implementation of this rule package will allow Indiana

to alleviate a very large backlog of required program amendments and will be considered by the Office of Surface Mining to be no less effective than the Federal program. The package itself includes requirements relating to definitions, regulation revisions, and remaining issues.”

Stevens said the Division of Reclamation has met with the Office of Surface Mining and the Indiana Coal Council concerning the proposed amendments. OSM informally reviewed the proposals several months ago and suggested “the package meets their standards”. The Regulatory Affairs Committee of the Indiana Coal Council has expressed some concerns with language in the proposed rule. “We have agreed to propose some alternative language in some areas, so long as the Office of Surface Mining feels it is equivalent.” Stevens said the Division of Reclamation intended to continue to meet with OSM and the Indiana Coal Council in attempt to resolve the outstanding concerns. He requested the Commission give the amendments preliminary adoption.

Damian Schmelz moved to give preliminary adoption to Indiana SMCRA rules as proposed by the Division of Reclamation and in response to mandates by the Federal Office of Surface Mining. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF WATER

Consideration of Amendments to 312 IAC 11-3-1 and 312 IAC 11-4-3 Allow Bulkhead Seawalls and Previously Authorized Seawalls to be Refaced with Glacial Stone under a General License; Administrative Cause No. 03-106W

George Bowman, Assistant Director of the Division of Water, presented this item. He distributed a photograph to the members of the Commission that showed a shoreline along a public freshwater lake. A refaced concrete seawall protected a portion of the shoreline, while glacial stone protected another portion of the shoreline. For the portion of the shoreline protected only by glacial stone, a white dashed line was superimposed on the photograph to help identify the shoreline.

Bowman said the current rule became effective on January 1, 2001. Since then, “we have encountered a couple of situations” that would support the proposed rule change. The amendments would assist the Division of Water, and they would “also help get some individuals out of trouble as the rules currently exist.”

He said, “One of the provisions of the current rules is that you can place glacial stone in front of a seawall, provided the seawall has not been previously refaced.” The refaced concrete seawall in the photograph is lawful, but because it has been refaced, the wall does not qualify for a general license for the placement of glacial stone. In addition, the area in the photograph that is protected by glacial stone seawalls would not qualify for a general license for another placement of glacial stone because only bulkhead seawalls qualify.

Bowman said, “What we are proposing here is to strike the language that references the number of times a wall can be refaced, but we would limit the placement of glacial stone so that it does not extend more than four feet beyond a licensed seawall approved by the Department or from an existing bulkhead seawall.” He asked the NRC to give preliminary adoption of the proposal.

Chairman Kiley asked Bowman about the Division of Water’s position regarding the placement of glacial stone in artificial channels along public freshwater lakes “where glacial stone might not be practical.” Bowman responded, “That’s an issue that we are currently looking at, and,

hopefully, we'll have some proposed rule amendments to bring before you in the next few months."

Kiley added, "That issue has been cropping up with some frequency because glacial stone seawalls in channels typically are not practical, primarily because of the nature of the bottoms, and we don't have the wave actions that we have in the open waters of the lakes." Bowman agreed, "Yes, and you often have steep side slopes along channels. That makes it very difficult to hold the glacial stone in place."

Robert Murphy moved to give preliminary adoption to amendments for the placement of glacial stone along seawalls as recommended by the DNR's Division of Water. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration for Preliminary Adoption of Amendments to 312 IAC 10-5 Governing Logjam and Obstruction Removals from Waterways Listed on the "Outstanding Rivers List" and Other Structural Changes to the General Licensing Rule Provisions for Floodways; Administrative Cause Number 03-105W

George Bowman also presented this item. Several proposed amendments would restructure the sections of the rule, providing general licenses for activities in floodways, so language having universal application to different types of general licenses would be included at the beginning of the rule. In some instances, general licenses are also available with respect to navigable waterways. Currently, the universal language is repeated in each section establishing a different general license.

Bowman said a substantive change would authorize a general license for logjam and obstruction removals from a waterway included in the NRC's "Outstanding Rivers List". Currently, the full licensure process must be included for any river or stream on the "Outstanding Rivers List". Some of the streams on the "Outstanding Rivers List" are on the list for their recreational value and not for environmental reasons. According to a general license for logjam removals, an applicant would be required to give notice of its intent to undertake a project, then the Division of Water would have ten days to determine whether it had objections. If there were objections, a full license review would yet be required.

Chairman Kiley asked about those circumstances where the U.S. Army Corps requires a Section 404 permit. Bowman responded that if a 404 permit were required, the project would not qualify for a general license under these rules. "There are some instances where the Corps may require a Section 404 permit, but most the time they would not." In other circumstances, such as a waterway listed as scenic or a salmonid stream, the general license would also be unavailable.

The Chair asked about logjam removals from the dam on the Mississinewa River in Marion. "They have logjams there all the time. The city owns that dam. Would the City of Marion, for instance, have to apply for a permit to remove logjams from the floodgate there?" Bowman responded that currently a full-blown license would be required, but if these amendments were given final adoption, the city could act upon a general license.

Rick Cockrum asked whether the amendments would allow the Division of Water to waive the licensure requirement for logjam removals from waterways on the "Outstanding Rivers List" on a "case-by-case basis". Bowman responded that, on a case-by-case basis, the Division of Water could authorize an applicant to act upon a general license without resort "to a full-blown permit".

Jerry Miller moved to give preliminary adoption to amendments to the rule governing general licenses in floodways, including a new opportunity for a general license on some waterways included in the “Outstanding Rivers List”, as recommended by the Division of Water. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF LAW ENFORCEMENT

Consideration for Preliminary Adoption of Amendments to 312 IAC 5-6-5 that Governs Special Watercraft Restrictions on Lake James to Extend Application to Other Lakes in the Lake James Chain; Administrative Cause No. 00-021W (LSA #03-92)

Maj. Samuel Purvis, Indiana State Boating Law Administrator, presented this item. He directed the Commission’s attention to aerial photographs at three sites within the Lake James Chain of Lakes where idle speed zones are recommended to support boating safety. These are between the Upper Basin and the Middle Basin of Lake James; the narrows separating Lake James and Snow Lake; and, along Follett Creek between Big Otter Lake and Snow Lake. “We have a petitioner for portions of this rule that initiated some things.”

In anticipation of preliminary adoption, Purvis said he and recently retired Lt. Ralph Taylor held meetings with property owners to provide explanation and gain input. He added, “There are a lot of opinions, not all of which are exactly what we propose, but almost everyone agrees some form of rule is needed.” Purvis recommended the amendments for preliminary adoption.

Rick Cockrum moved to give preliminary adoption to amendments to 312 IAC 5-6-5, governing special watercraft restrictions on Lake James, to extend application of the rule section to all the Lake James Chain of Lakes, and to add three new idle speed zones. Maryann Habeeb seconded the motion. Upon a voice vote, the motion carried.

NATURAL RESOURCES COMMISSION DIVISION OF HEARINGS

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Standards to Govern the Register of Indiana Historic Sites and Historic Structures (312 IAC 20-5); Administrative Cause No. 02-081H (LSA #02-329(F))

Steve Lucas, Hearing Officer, presented this item. For consideration as to final adoption is the codification of provisions governing management of the Indiana Register of Historic Sites and Historic Structures. The State Register is managed by the DNR’s Division of Historic Preservation and Archaeology with guidance from the Indiana State Historic Preservation Review Board and the State Historic Preservation Officer. Lucas said the State Historic Preservation Review Board has endorsed the proposal.

Jane Anne Stautz moved to give final adoption to 312 IAC 20-5 to assist the Indiana State Historic Preservation Review Board and the DNR’s Division of Historic Preservation and Archaeology with administration of the State Register of Historic Sites. Maryann Habeeb seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Amendments to Historic Preservation Rules to Set Minimum Review Times and to Add Definitions (312 IAC 20); Administrative Cause No. 02-091H (LSA #03-12(F))

Steve Lucas, Hearing Officer, also presented this item. Again, the proposed rule amendments apply to activities of the Division of Historic Preservation and Archaeology and the Indiana State Historic Preservation Review Board. Once again, the Historic Preservation Review Board has endorsed the concept of the amendments. He said the amendments would add definitions and would establish minimum timeframes for the DNR and the Historic Preservation Review Board to consider a proposal to alter, demolish, or remove an historic site or historic structure on a state property or where state funding is involved.

Lucas said there were two changes recommended from language given preliminary adoption. The “first of these is identified in my report to the Commission and would substitute the phrase ‘mailed’ for ‘made available’ in the measurement of the minimum time for review by the Historic Preservation Review Board.” The Division of Historic Preservation and Archaeology suggested the second change subsequent to entry of the report. The latter change asks for “an effective date for the rule amendments of December 1, 2003 rather than statutory date that would otherwise apply. The December 1 date would be a somewhat later date than the statutory date but would put it neatly between the quarterly meetings of the Historic Preservation Review Board.” Lucas said he recommended final adoption of the rules with the incorporation of both of these changes.

Ray McCormick moved to give final adoption to the rule amendments governing the Division of Historic Preservation and Archaeology and the Indiana State Historic Preservation Review Board, including definitions and minimum timeframes for review, as recommended by the hearing officer. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption Permanent Ecozone Restricting Boating in Conklin Bay, Lake Wawasee (312 IAC 5-6-6); Administrative Cause No. 03-026S (LSA #03-29(F))

Steve Lucas, Hearing Officer, also presented this item. He said the proposed amendments “are all in effect already as an emergency rule. Because some of the concepts and application were kind of a new thing, including the incorporation of GPS into rule making, we had to retrace a few steps. The effect would be a permanent rule for the protection of ecozones in Conklin Bay on Lake Wawasee.” He recommended the language be given final adoption.

Chairman Kileys reflected, “I’m happy to report that the buoying of the ecological zones works. Since we went through this lengthy rule-adoption process, the public sentiment of property owners and non-property owners has been very favorable. We originally had pledged to put in about 15 to 20 buoys in Conklin Bay. I talked to Lt. John Sullivan, who is the Commanding Officer up there, as well as the property owners, and we cut it back to about a half a dozen buoys. It’s now unobtrusive. People for the most part are obeying them, and it’s working both there and in Johnson Bay.”

Rick Cockrum moved to give final adoption to the rule amendments making permanent boating restrictions for ecological protection on Conklin Bay in Lake Wawasee. Maryann Habeeb seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Recommendation for Final Adoption of Amendments to Rules Governing Public Use of DNR Properties (312 IAC 8 and 312 IAC 9); Administrative Cause No. 02-101A (LSA #03-50(F))

Steve Lucas, Hearing Officer, also presented this item. He said there is a committee within the Department of Natural Resources that regularly reviews the DNR property rules. The committee includes all the property-managing divisions, as well as the Division of Law Enforcement, and is chaired by Marian England of the Division of State Parks and Reservoirs. Marian England really does the work. “What we call the property rules are those that govern the use of DNR properties by citizens.” For consideration are changes to standards governing firearms, distinguishing service animals from pets, expanding the delegation of authority by property managers to allow extended stays at campgrounds for medical reasons, clarifying where swimming can take place on DNR lakes, and prohibiting hunting on Indiana State Historic Sites. Lucas said, “These rules weren’t expected to be controversial, and they weren’t. We had no negative comments, and I would present them for consideration as to final adoption.”

Robert Murphy moved to give final adoption amendments to rules governing citizen use of DNR properties. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Rules Amending 312 IAC 11-5-1 Governing Exceptions to Licensing Standards for Nonconforming Uses with Respect to Construction Along and Within Public Freshwater Lakes; Administrative Cause No. 03-028D (LSA #03-30(F))

Jennifer Kane, Hearing Officer, presented this item. She noted that according to the Federal Americans with Disabilities Act, “no qualified handicapped person shall, on the basis of handicap, be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.” The proposed rule amendments would recognize a new exception to the environmental standards, governing construction along public freshwater lakes, where needed to comply with the ADA for public facilities constructed by a governmental entity. She explained that certain materials—such as concrete, which is otherwise excluded from less developed areas according to lakeshore classifications in 312 IAC 11-2 through 312 IAC 11-5—may be found appropriate in order to comply with the Federal law.

Kane said proposed exception would not preclude the DNR Division of Water from disallowing certain materials at a site if ecological or other impacts outweigh the public benefit of a design at a particular location. The amendments do not exempt from the licensure process the proposed construction of ADA facilities at DNR public access sites.

Kane noted that an emergency rule covering the same subject matter became effective on February 14, 2003. She said the emergency rule allowed summer construction crews to mobilize this year at considerable cost savings to the Department. Kane said the rule amendments now under consideration would make permanent the emergency rule, and she recommended them for final adoption.

Damian Schmelz moved to give final adoption to the amendments to 312 IAC 11-5-1 to provide greater flexibility for governmental projects fostering the purposes of the Americans with Disabilities Act. Jane Anne Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Hearing Officer and Recommendation for Final Approval of Rule Recodification by Readoption of 312 IAC 6 Governing Navigable Waters; Administrative Cause No. 03-001W (LSA #02-331(F))

Jennifer Kane, Hearing Officer, presented this item. She said the Commission in September 2002 implemented the “recodification by readoption” guidance process. She noted that before the Commission was the consideration of “recodification by readoption” for 312 IAC 6 (Navigable Waters). Consistent with the Commission’s guidance, the Director of the Division of Hearings gave preliminary adoption to the article. Kane stated that the article was included in the Commission packet for review; but no amendments were proposed. She explained that “recodification by readoption” is an ongoing statutory responsibility, and every year articles would be presented in a similar fashion.

Kane said the public hearing was convened as scheduled, but no public comments were received. She recommended “recodification by readoption” of 312 IAC 6 in its entirety.

Damian Schmelz moved to approve the recodification by readoption of 312 IAC 6. Robert Murphy seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Hearing Officer and Recommendation for Final Approval of Rule Recodification by Readoption of 312 IAC 14 Governing Timber Buyers, Their Agents, and Timber Growers; Administrative Cause No. 03-004F (LSA #02-331(F))

Jennifer Kane also presented this item. She said 312 IAC 14 governs standards for timber buyers, their agents, and timber growers. No amendments to the article were proposed. The NRC’s guidance process and applicable state laws were followed. Kane said a public hearing was convened as scheduled on April 16, 2003, but no member of the public attended the public hearing or otherwise commented. She recommended that the Commission approve the “recodification by readoption” of 312 IAC 14 in its entirety.

Damian Schmelz moved to approve the recodification by readoption of 312 IAC 14. Robert Murphy seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Hearing Officer and Recommendation for Final Approval of Rule Recodification by Readoption of 312 IAC 15 Governing Timber Management; Administrative Cause No. 03-005F (LSA #02-331(F))

Jennifer Kane also presented this item. She said 312 IAC 15 governs standards for timber management. No amendments to the article were proposed. The NRC’s guidance process and applicable state laws were followed. Kane said a public hearing was convened on April 16, 2003, but no member of the public attended the public hearing or otherwise commented. She recommended that the Commission approve the “recodification by readoption” of 312 IAC 15 in its entirety.

Damian Schmelz moved to approve the recodification by readoption of 312 IAC 15. Robert Murphy seconded the motion. Upon a voice vote, the motion carried.

Fort Wayne-Allen County Airport Authority v. Indiana State Historic Preservation Review Board (Administrative Cause No. 02-153H).

Steve Lucas, Director of the Division of Hearings, briefly outlined this information item. He said inclusion of this recent agency decision was part of the recent initiative to keep the NRC current as to legal developments. Judicial or agency decisions can be significant to Commission functions, particularly rule writing and the development of nonrule policy documents.

Lucas said the *Fort Wayne-Allen County Airport Authority* decision ruled the Keeper of the National Register was the legal entity authorized to decide administrative review with respect to placement of Indiana sites on the National Register. The Keeper is an office within the U. S. Department of Interior. This result contrasts with decisions for the placement of a site of the Indiana Register of Historic Sites, for which the NRC (acting through its recently formed Objections Committee) provides administrative review.

Consideration of Memorialization of Commission Action Taken During Its May 20, 2003 Meeting in Hoosier Environmental Council v. Department of Natural Resources and Foertsch Construction Company; Administrative Cause No. 97-065R.

Steve Lucas also introduced this item in his capacity as Director of the Division of Hearings. He said the item was intended to memorialize action taken at the Commission's May 22 meeting.

In an effort to help bring closure at the administrative level, the attorneys for the Hoosier Environmental Council and the Department of Natural Resources communicated after the May 22 meeting. HEC is represented by Michael Mullett, and the DNR is represented by Ihor Boyko. They reviewed the minutes as they pertain to this proceeding and agree the minutes now fairly reflect the oral argument held on that date. The attorneys for the parties also agree that findings of fact, conclusions of law, and a final order are needed to bring administrative closure.

As a courtesy to the Commission, Lucas said the DNR's attorney drafted proposed findings, conclusions, and a final order. "It seeks to embody what Mr. Boyko's understanding is of your intent, as derived from the discussions the Commission had during its last meeting and from the minutes, and to reduce that understanding to writing." This draft has been distributed to the membership "and is now before you for possible action."

Lucas said the attorney for HEC has had an opportunity to view the draft and understands it is being tendered to the Commission for final action, although HEC believes the proposal is an incorrect disposition of the proceeding. "The Hoosier Environmental Council does not agree that the draft by Ihor Boyko is the right answer."

The Chair stated that formal findings of fact, conclusions of law, and a final order were legally required under the Administrative Orders and Procedures Act. "We are obliged as a board to make specific findings of fact with respect to our decision." He said a document of the nature that was tendered by Boyko "is an absolute must. Without appropriate findings, the case would be sent back by a court on review. Sooner or later, we'd have it in our lap again."

Jerry Miller moved to adopt the findings of fact, conclusions of law, and final order as tendered to the Natural Resources Commission by the attorney for the Department of Natural Resources. Rick Cockrum seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

At approximately 3:45 p.m., the meeting adjourned.

NEXT MEETING

September 16, 2003 at 10:00 a.m., EST at Ft. Harrison State Park, Indianapolis (Lawrence)